

EXHIBIT F

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF VIRGINIA
 3 RICHMOND DIVISION

5 -----
 6 ePLUS, INC. : Civil Action No.
 7 vs. : 3:09CV620
 8 LAWSON SOFTWARE, INC. : July 28, 2010
 9 -----

10 COMPLETE TRANSCRIPT OF THE MOTIONS HEARING
 11 BEFORE THE HONORABLE ROBERT E. PAYNE
 12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 Scott L. Robertson, Esquire
 15 Michael G. Strapp, Esquire
 16 Jennifer A. Albert, Esquire
 17 Goodwin Procter, LLP
 18 901 New York Avenue NW
 19 Suite 900
 Washington, D.C. 20001
 20 Craig T. Merritt, Esquire
 21 Christian & Barton, LLP
 22 909 East Main Street
 23 Suite 1200
 Richmond, Virginia 23219-3095
 24 Counsel for the plaintiff

25 Peppy Peterson, RPR
 Official Court Reporter
 United States District Court

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P R O C E E D I N G S

00:22:38 2
 00:22:39 3 THE CLERK: Civil action number 3:09CV00620, ePlus,
 00:22:55 4 Inc., versus Lawson Software, Inc. Will counsel please state
 00:29:23 5 their names for the record and identify the parties they
 00:29:26 6 represent.
 00:29:30 7 MR. MERRITT: Greg Merritt, Christian & Barton, for
 00:29:33 8 ePlus.
 00:29:35 9 MR. ROBERTSON: Scott Robertson, Goodwin Procter
 00:29:36 10 firm. With me are my partners.
 00:29:41 11 MR. STRAPP: Michael Strapp.
 00:29:43 12 MS. ALBERT: Jennifer Albert.
 00:29:47 13 MR. CARR: Dabney Carr, Troutman Sanders, for Lawson
 00:29:50 14 Software.
 00:29:51 15 MR. McDONALD: Good morning, Your Honor. Dan
 00:29:53 16 McDonald, Merchant & Gould, representing Lawson Software, and
 00:29:57 17 with me today, I'd like to introduce Kirstin Stoll-DeBell, also
 00:30:02 18 with Merchant & Gould, also representing Lawson Software.
 00:30:07 19 MS. STOLL-DeBELL: Good morning.
 00:30:09 20 THE COURT: Morning. I always think it's a good idea
 00:30:49 21 to throw counsel a curve ball. I always enjoyed it so much
 00:30:58 22 when judges did it to me.
 00:30:59 23 I've decided, upon further reflection, that I would
 00:31:02 24 like to hear your views on the damages issue reflected in
 00:31:08 25 Lawson's -- what is it, motion in limine number one? Is that

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1 APPEARANCES: (cont'g)
 2 Dabney J. Carr, IV, Esquire
 3 Troutman Sanders, LLP
 4 1001 Haxall Point
 5 Richmond, Virginia 23219
 6 Daniel W. McDonald, Esquire
 7 Kirstin L. Stoll-DeBell, Esquire
 8 Merchant & Gould, PC
 9 80 South Eighth Street
 10 Suite 3200
 11 Minneapolis, Minnesota 55402
 12 Counsel for the defendant

13 what it is?
 14 MR. McDONALD: That's one of them, Your Honor.
 15 There's one, two, and three all related to the damages issue.
 16 THE COURT: I mean the settlement.
 17 MR. McDONALD: That's where you want to start?
 18 THE COURT: No, we'll start with the motion for
 19 summary judgment, but I would like somebody to -- I'd like for
 20 you to address that. I don't want a lot of -- we don't have a
 21 lot of time to do this, and we've got a lot to do, so get right
 22 to the point. All right, the motion for summary judgment on
 23 the written description.
 24 MR. McDONALD: Thank you, Your Honor. May it please
 25 the Court, I have some binders with PowerPoint slides I'd like
 to hand up.
 26 THE COURT: Is that a question of law or fact?
 27 MR. McDONALD: It's a question of fact, but the facts
 28 are undisputed. Can I hand up the binders?
 29 THE COURT: I'm sorry, it's in paragraph four of what
 30 is to be argued.
 31 MR. McDONALD: That was just a fast ball, not a curve
 32 ball.
 33 THE COURT: I don't know. Maybe that was a slider.
 34 All right.
 35 MR. McDONALD: Is the PowerPoint visible on the
 36 screen right now for Your Honor?

06:51:11 **1** because you said it doesn't have anything to do with
 06:51:14 **2** pre-filing. On the willful infringement issue, that's the only
 06:51:17 **3** issue it's relevant to; right?
 06:51:19 **4** MS. STOLL-DeBELL: Post-filing.
 06:51:20 **5** THE COURT: Okay. Now, how does it play out
 06:51:21 **6** post-filing? Tell me about that.
 06:51:23 **7** MS. STOLL-DeBELL: There is going to be evidence of
 06:51:25 **8** when they say Lawson started infringing these patents. They
 06:51:28 **9** have to put it on for their damages case, and we're talking
 06:51:31 **10** about which version they say infringed and when they say Lawson
 06:51:35 **11** started infringing.

06:51:36 **12** So those are going to be facts that come into the
 06:51:39 **13** case. So the jury will hear about that, and it will be a fact
 06:51:43 **14** that these prior versions, anything before 8.0.3, does not
 06:51:48 **15** infringe. And we will have witnesses --

06:51:51 **16** THE COURT: They're not going to prove that. They're
 06:51:54 **17** not going to offer that evidence -- are you, Mr. Robertson? He
 06:51:58 **18** said he wasn't.

06:51:58 **19** MR. ROBERTSON: No. I'm going to prove that 8.0.3
 06:52:02 **20** and subsequent versions infringe.

06:52:04 **21** THE COURT: But you're not going to say, in doing
 06:52:06 **22** that, earlier versions they had didn't infringe. That's not
 06:52:10 **23** going to be part of your case.

06:52:11 **24** MR. ROBERTSON: Not going to be part of my case.
 06:52:13 **25** THE COURT: So now it comes in, you say, to deal with

06:53:43 **1** thinking the thing through as if logic dictated that these
 06:53:49 **2** things follow one unto the other. That isn't exactly how the
 06:53:53 **3** trial of the case works. We're looking at whether or not it's
 06:53:58 **4** probative in your case. All right. Anything else that you
 06:54:03 **5** wish to say on any of these things?
 06:54:06 **6** MS. STOLL-DeBELL: I don't think so, Your Honor.
 06:54:08 **7** THE COURT: Okay.
 06:54:10 **8** MR. ROBERTSON: One point on that last issue, Your
 06:54:13 **9** Honor.
 06:54:14 **10** THE COURT: Yes, since you have the burden on the
 06:54:15 **11** motion.
 06:54:17 **12** MR. ROBERTSON: If it's all the same and 8.0.3
 06:54:20 **13** doesn't infringe, they don't willfully infringe, what's the
 06:54:23 **14** relevance of 5.0 and 6.0?
 06:54:26 **15** THE COURT: Because they looked at 5.0 and 6.0 which
 06:54:31 **16** you didn't accuse of infringing, so they didn't think they were
 06:54:34 **17** infringing, and they thought you were all wet.
 06:54:37 **18** MR. ROBERTSON: If it hasn't changed, what they're
 06:54:39 **19** saying is then it's invalidated because it predates the
 06:54:41 **20** patents. If they're not infringing now, they're not willfully
 06:54:44 **21** infringing, it makes the relevance of 5.0 and 6.0 that they
 06:54:48 **22** didn't infringe even earlier pre-attenuated and marginal in my
 06:54:53 **23** view. Thank you.
 06:54:57 **24** THE COURT: This motion is going to be granted. This
 06:55:02 **25** report goes somewhat considerably off the reservation

06:52:18 **1** -- when it comes in as part of your case.
 06:52:21 **2** MS. STOLL-DeBELL: Well, yeah. I mean, at a minimum,
 06:52:23 **3** it's part of our cross-examination of Dr. Weaver, that he is
 06:52:26 **4** not asserting that these prior versions infringed, and he is
 06:52:30 **5** asserting --
 06:52:30 **6** THE COURT: I'm going to tell you what that's going
 06:52:32 **7** to come up with. That's going to come up with what you call an
 06:52:35 **8** objection, and it's going to be sustained most likely. You've
 06:52:43 **9** got to realize that you've got to try cases in the order that
 06:52:46 **10** the issues are presented.

06:52:47 **11** Now, this is something that you need to raise, so the
 06:52:50 **12** question is, can you put in evidence probative of your state of
 06:52:56 **13** mind that when you got the lawsuit, you didn't think you were
 06:53:01 **14** infringing with the new 8.0.3 because it was just like all the
 06:53:08 **15** others and they didn't infringe.

06:53:10 **16** MS. STOLL-DeBELL: Yes.

06:53:14 **17** THE COURT: So you have to then, you say, offer proof
 06:53:18 **18** that those earlier ones didn't infringe in order to be able to
 06:53:21 **19** make that argument; right?

06:53:23 **20** MS. STOLL-DeBELL: Right, but I think it's all tied
 06:53:25 **21** in to we don't think any of it infringes because it's all the
 06:53:29 **22** same thing. So it's -- you know, we don't think any of them
 06:53:34 **23** had catalogs.

06:53:35 **24** THE COURT: What you're doing is thinking without
 06:53:37 **25** putting it in context of a piece of litigation. You're

06:55:11 **1** established by the previous orders of the Court beginning with
 06:55:20 **2** the requirements that contentions, invalidity contentions be
 06:55:25 **3** stated at a certain time, and then Lawson was given a second
 06:55:33 **4** bite at the apple and told to restate them, and those orders
 06:55:38 **5** were put in place in order that everybody would know how the
 06:55:43 **6** discovery was to proceed, what were the contentions, what are
 06:55:49 **7** the contentions, what do we then direct the discovery to.
 06:55:54 **8** They are not just pro forma requirements of throwing
 06:55:58 **9** up pieces of paper into the file that contain something about
 06:56:03 **10** invalidity. They shape -- they are the skeleton of the case to
 06:56:08 **11** which the flesh and muscles and viscera are attached by
 06:56:14 **12** discovery, and they mean something.
 06:56:21 **13** To the extent that Dr. Shamos's report talks about
 06:56:29 **14** infringement issues -- I mean invalidity issues or infringement
 06:56:34 **15** issues beyond what was disclosed, that evidence cannot be
 06:56:46 **16** brought in. It just simply can't.
 06:56:49 **17** When the validity contentions were filed in the
 06:56:54 **18** second supplement on the issue of anticipation, it was said
 06:56:58 **19** there were 14 claims that were infringed -- I mean anticipated.
 06:57:07 **20** J-Con had one. Gateway was three claims. PO Writer was seven
 06:57:15 **21** claims anticipated, and 542, King 542 anticipated three.
 06:57:24 **22** Dr. Shamos says for the first three, J-Con, Gateway,
 06:57:29 **23** and PO Writer, there were 13 each, and for King 542 there were
 06:57:34 **24** 11, there were 50. He can't testify to anything but to the 14.
 06:57:40 **25** That's been clear from the beginning.